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ARIZONA ATTORNEY GENERAL

June 12, 1952

Opinion No. 53-114

TO: Honorable Clay Simer
Arizona State Senator
P. O. Box 402
Winslow, Arizona

RE: Tax exemption of a charitable
non-profit hospital

QUESTION: Will a charitable non-profit
hospital to be constructed at
Winslow, Arizona, be tax exempt?

In view of the fact that articles of incorporation have not as yet been drawn and no books or records of the hospital are available, it is impossible to render an opinion on whether this particular hospital will be exempt from taxes under the Arizona statutes. However, given the facts that the hospital will be non-profit and used principally for the relief of indigents, it is our opinion that the hospital will be exempt from taxes.

Article 9, Section 2 of the Arizona Constitution provides in part as follows:

"§2. (Tax Exemption.)--There shall be exempt from taxation all federal, state, county and municipal property. Property of educational, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law." * * * (Emphasis supplied)

Since the term "may be exempt" is used, the constitutional provision does not of itself exempt any property of educational, charitable and religious institutions. The provision merely permits the legislature to exempt this property if it sees fit, therefore, it is necessary that there be an enabling act providing specifically for the exception from taxes for property belonging to these institutions.

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Section 73-201, A.C.A. 1939, states:

"73-201. All property subject to taxation--
Exceptions. Nothing herein shall be con-
strued to require or permit double taxation.
All property shall be subject to taxation,
except:

* * * * *

3. Hospitals, asylums, poor houses, and
other charitable institutions for the relief
of the indigent or afflicted, and the lands
thereto appurtenant, with their fixtures and
equipments, not used or held for profit; * * *

As stated in the case of LOIS GRUNOW MEMORIAL CLINIC v.
OCLESWY, (1933) 42 Ariz. 98, 22 P. 2d 1076, the test is whether
the hospital is used in an effort to derive profit. Though it
may not in fact realize a profit, if it is operated for the pur-
pose of making a profit, no immunity from taxation is available.

In light of Article 9, Section 2 of the Arizona, Constitu-
tion, it appears that not only must the hospital be non-profit,
but it must also be a charitable institution. The court in the
case of CONRAD v. MARICOPA COUNTY, (1932) 40 Ariz. 390, 12 P. 2d
613, construed the term "charitable institutions" as used in Sec-
tion 73-201 (3). In this case it was decided that it was an in-
stitution whose principal use is for the relief of the indigent
or afflicted.

The case of SOUTHERN METHODIST HOSPITAL AND SANATORIUM OF
TUCSON v. WILSON, (1938) 51 Ariz. 424, 77 P. 2d 458, used more
liberal language stating at page 429:

"* * * The word 'charity' has many definitions,
the one most commonly thought of by the ordi-
nary person being defined by Webster as 'what-
ever is bestowed gratuitously on the needy or
suffering for their relief,' and its synonym
is 'alms.' It is also, however, defined as
'an institution founded by a gift and intended
for the use of the public as a hospital, a
library, a school, a museum, etc.' The idea
which is back of all of the definitions of
charity, we think, may well be described as
'an act or feeling of benevolence.' It is
based primarily upon the motive behind the
act which is that of benefit to another,
without private profit to the donor. * * *
Were all the funds of an institution which

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was established for a charitable purpose contributed by those who receive no direct benefit from the institution, without any expectation of return, and were the services of the institution given absolutely free of any charge whatever, it would be recognized by all that the institution was, in the strictest interpretation of the word, a charitable one. But if we are to limit the application of the phrase 'charitable institution' to those of this nature, the list would be small, indeed, and if those who gave of their time and money, without hope of personal return therefrom, to keep the many hospitals of this country open were to be told that their contribution must be sufficient to support the institution entirely, without any payment whatever by anyone for the services which it rendered, we are certain that a vast majority of those hospitals would be closed tomorrow. There are few of them, indeed, that are able to dispense unlimited hospitalization free of charge. Only the nursing sisters of religious organizations, as a rule, will give their personal services indefinitely without remuneration, and even they must be fed and clothed. There are few communities where the food necessary for the inmates of such an institution, the fuel to warm them, the medicine to cure their ills, will be given in their entirety free of charge. The amount of endowment sufficient to provide funds for this purpose would be great. * * * 12, therefore, we are to insist that those who contribute with the idea that the institution which receives their funds is a charitable one, must make that contribution large enough to maintain the institution not only a charitable, but as a free one, in many, if not most, of our communities there will be no place where the sick may be cared for under any circumstances, except the private nursing homes available only to the very wealthy, or the county hospitals for indigents. We think the position that the test of a charitable institution is the extent of the free services rendered, is

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difficult of application and unsound in theory. Is there a definite test which can be given? If the purpose of the institution is one which is recognized in law as charitable, and if it is not maintained for the private gain, profit, or advantage of its organizers, officers, or owners, directly or indirectly, we think the institution is properly characterized as a charitable one, notwithstanding the fact that it charges for most, if not all, of the services which it may render, so long as its receipts are devoted to the necessary maintenance of the institution and the carrying out of the purpose for which it was organized. * * *

In considering the proper interpretation and application of laws exempting property from taxation, it is necessary to be guided by the well settled rule in Arizona that such laws are to be strictly construed and that the presumption is against tax exemption. CONRAD v. MARICOPA COUNTY, *supra*, and LOIS GRUEN MEMORIAL CLINIC v. OGLESEY, *supra*.

The facts presented merely state that the hospital, when constructed, "will be non-profit". Applying the principles as outlined above, it is our opinion that a charitable hospital not used or held for profit is exempt from taxation along with the lands appurtenant thereto, with their fixtures and equipments, as provided in Section 73-201, A.C.A. 1939.

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